



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,620	08/19/2003	Mogens N. Olesen	EVipo002 APP	7510
7590	08/10/2004		EXAMINER	
Poulsen Roser ApS 620 South Front Street Central Point, OR 97502			BELL, KENT L	
			ART UNIT	PAPER NUMBER
			1661	
DATE MAILED: 08/10/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/644,620

Applicant(s)

OLESEN ET AL.

Examiner

Kent L. Bell

Art Unit

1661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status***application filed 8/19/03*

- 1) ☒ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 8/19/03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

*K. L. Bell*

**Detailed Action**

**Objection to the Disclosure**

**37 CFR 1.163**

The following is a quotation of section (a) of 37 CFR 1.163:

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

**35 USC § 112**

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

As specific to United States Plant Patent applications, the specifics of 37 CFR 1.164 (reproduced below) are controlling:

The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted.

### Detailed Action

In plant applications filed under 35 U.S.C. 161, the requirements of 35 U.S.C. 112 are limited. The following is a quotation of 35 U.S.C. 162:

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

The disclosure is objected to under 35 CFR 1.163(a) and under 35 U.S.C. 112, first paragraph, because the specification presents less than a full, clear, and complete botanical description of the plant and the characteristics which define same per se and which distinguish the plant from related known cultivars and antecedents.

More Specifically:

A. Page 2, line 3, Applicants set forth the instant plant's species designation as "*flammula viticella*". *Flammula* does not appear to be a proper species designation. It appears the proper species designation is --*viticella*--. Correction and/or clarification is necessary.

B. Page 2, lines 13 and 14, Applicants state the instant plant originated from an uncontrolled pollination of two unnamed *Clematis* plants. Applicants should review the instant plant's origin and set forth in the specification information relative for at least the instant plant's female parental cultivar including name and patent status, if parental cultivars are known.

**Detailed Action**

C. Applicants should import into the specification comparative information between the instant plant and at least the female parental cultivar, if known, such need not be in any great detail, but should at least be to the extent necessary to positively distinguish the respective plants from each other.

D. Page 4, lines 17-26, Applicants should set forth in the specification the age of the plants when described.

E. Page 6, lines 6 and 7, Applicants should set forth in the specification additional information relative to the instant plant's peduncle including the typical and observed peduncle diameter, if readily available.

F. Page 6, line 17, Applicants state "sepals". Applicants should review this recitation as it is possible applicants actually meant to state --tepals--. Correction and/or clarification is necessary.

G. Page 6, lines 21 and 22, Applicants state "Tepal depth as viewed from the side is 5 to 10 mm.". This recitation is not understood as it is unclear what applicants are intending. Correction and/or clarification is necessary.

**Detailed Action**

H. Page 7, lines 1-12, Applicants set forth colorations but it is not clear what applicants are describing. It appears tepal color is being set forth. If such is the case then applicants should state --Tepal color:-- at line 1 of the same page to clearly set forth what characteristic is being described.

I. Page 7, line 25 to page 8, line 14, Applicants should set forth in the specification additional information relative to the instant plant's tepals including the typical and observed tepal length, and base descriptor.

J. Page 8, line 20, Applicants set forth an anther size but do not specify whether this dimension is for the length or width or other. Applicants should set forth in the specification the typical and observed anther length.

K. Page 9, lines 16-22, Applicants should set forth in the specification additional information relative to the instant plant's stem including the typical and observed stem length and diameter.

**Detailed Action**

L. Page 10, line 5 to page 11, line 4, Applicants should set forth in the specification additional information relative to the instant plant's leaves including the typical and observed compound leaf length and width.

M. Page 10, line 16, Applicants should delete "Length: 60 to 80 mm." as this information has been previously set forth at page 9, lines 24 and 25.

N. Page 12, The Claim, It is suggested that applicants set forth a more simplistic claim such as:

--A new and distinct variety of Clematis plant, named 'Evipo002', as illustrated and described.--.

The above listing may not be complete. Applicants should carefully review the disclosure and import into same any corrected or additional information which would aid in botanically identifying and/or distinguishing the cultivar for which United States Plant Patent protection is sought.

**Detailed Action**

**Claim Rejection**

**35 U.S.C. 112, 1st & 2nd Paragraphs**

Claim 1 is rejected under 35 U.S.C. 112, first and second paragraphs as not being supported by a clear and complete botanical description of the plant for the reasons set forth in the Objection to the Disclosure Section above.

**Future Correspondence**

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kent L. Bell whose telephone number is (703) 306-3224. The Examiner can normally be reached Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Andrew Wang, can be reached at (571) 272-0811.

The fax phone number for the group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-1600.

K. L. Bell

**KENT BELL  
PRIMARY EXAMINER**

*Kent L. Bell*